

**THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF MISSISSIPPI  
(Aberdeen)**

In re: )  
 )  
JASON FLY LOGGING, LLC, ) Case No. 18-10483-JDW  
 )  
 )  
Debtor. ) Judge Jason W. Woodard  
 ) Chapter 11  
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**JOINT MOTION TO APPROVE SALE OF 2017 TIGERCAT 635E SKIDDER (S/N  
6352085) AND TIGERCAT GRAPPLE (S/N SBG7203-25-0321)  
FREE AND CLEAR OF LIENS**

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The above-captioned debtor (the “Debtor”) and Sumitomo Mitsui Finance and Leasing Company, Limited (“SMFL” and together with the Debtor, the “Movants”), pursuant to 11 U.S.C. §363(b) and (f), and Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure, hereby move the United States Bankruptcy Court for the Northern District of Mississippi (this “Bankruptcy Court”) for an order approving the sale of a 2017 Tigercat 635E Skidder (S/N 6352085) and Tigercat Grapple (S/N SBG7203-25-0321) (collectively with any additions and accessions thereto, the “Equipment”) to Dragon Woodland Corporation (the “Purchaser”), free and clear of all liens, claims, interests and encumbrances (the “Sale”). In support of this Motion, Movants state as follows:

**JURISDICTION AND VENUE**

1. The Debtor commenced this case by filing voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) on February 12, 2018 (the “Petition Date”).

2. The Debtor continues to manage its business as Debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. As of the date hereof, no trustee or examiner

has been requested in these chapter 11 cases.

3. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

## **BACKGROUND**

4. Purchaser has agreed to buy the Equipment for a purchase price of \$265,000 (the “Purchase Price”) as a result of arms-length and good-faith negotiations.

5. The Debtor believes that the Purchase Price is equal to the fair market value and the Debtor submits that no further marketing is necessary.

6. SMFL holds a duly-perfected security interest in the Equipment. SMFL’s lien on the Equipment secures payment of a Promissory Note to Financing and Security Agreement No. 1 dated November 3, 2016 in the original principal amount of \$406,750 made by the Debtor payable to SMFL (the “Note”). The amount owed to SMFL under the Note exceeds the Purchase Price.

7. Pursuant to this Sale Motion, Debtor seeks the approval of the Court to sell the Equipment to the Purchaser for \$265,000, as a legal, valid, and effective transfer of the Equipment which will vest the Purchasers with all right, title, and interest in the Equipment free and clear of any liens and claims of any and every kind or nature whatsoever pursuant to 11 U.S.C. §363(f) and all other applicable laws.

8. The Debtor believes the sale of the Equipment is in the best interest of the estate and creditors.

## **BASIS FOR RELIEF**

### **A. Section 363(b) Authorizes the Proposed Sale.**

8. Section 363(b) of the Bankruptcy Code provides that “the trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the

estate.” Section 1107(a) of the Bankruptcy Code grants a debtor-in-possession the powers of a trustee in respect to various matters including sales under section 363(b) of the Bankruptcy Code.

9. Although section 363 of the Bankruptcy Code does not specify a standard for determining when it is appropriate for a court to authorize the use, sale or lease of property of the estate, courts have found that a debtor’s sale or use of assets outside the ordinary course of business should be approved if the debtor can demonstrate a sound business justification for the proposed transaction. *See, e.g., In re Eagle Picher Holdings, Inc.*, 2005 WL 4030132 (Bankr. S.D. Ohio 2005); *In re Martin*, 91 F.3d 389, 395 (3rd Cir. 1996); *In re Abbotts Dairies of Penn., Inc.*, 788 F.2d 143 (3rd Cir. 1986); *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2nd Cir. 1983).

10. The key consideration is the Court’s finding that a good business reason exists for the sale. *Stephens Industries, Inc. v. McClung*, 789 F.2d 386 (6th Cir. 1986); *see also, Myers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996); *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp., (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (Bankr. D. Del. 1999).

Whether the proffered business justification is sufficient depends on the case. As the Second Circuit held in *Lionel*, the bankruptcy judge should consider all salient factors pertaining to the proceeding and, accordingly, act to further the diverse interests of the debtor, creditors and equity holders, alike. He might, for example, look to such relevant factors as the proportionate value of the assets of the estate as a whole, the amount of elapsed time since the filing, the likelihood that a plan of reorganization will be proposed and confirmed in the near future, the effect of the proposed disposition on future plans of reorganization, the proceeds to be obtained from the disposition vis-a-vis any appraisals of the property, which of the alternatives of use, sale or lease the proposal envisions and, most importantly perhaps, whether the asset is increasing or decreasing in value. This list is

not intended to be exclusive, but merely to provide guidance to the bankruptcy judge.

*In re Walter*, 83 B.R. 14, 19-20 (9th Cir. Bankr. 1988), citing *In re Lionel Corporation*, 722 F.2d 1063, 1070-71 (2nd Cir. 1983).

11. Once the Debtor articulates a valid business justification, “[t]he business judgment rule ‘is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.’” *In re S.N.A. Nut Co.*, 186 B.R. 98 (Bankr. N.D. Ill. 1995); *see also In re Integrated Res., Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992); *In re Johns-Manville Corp.*, 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) (“a presumption of reasonableness attaches to a debtor’s management decisions”).

12. The Debtor, in its business judgment, believes that the sale of the Equipment is in the best interests of the Debtor and its creditors.

**B. Sound Business Reasons Support a Private Sale.**

13. Bankruptcy Rule 6004(f)(1) permits private sales by a debtor. Fed. R. Bankr. P. 6004(f)(1) (“All sales not in the ordinary course of business may be by private sale or by public auction.”). Courts have also noted that private sales are appropriate and permissible under Section 363. *See In re Bakalis*, 220 B.R. 525, 531 (Bankr. E.D.N.Y. 1998) (“the sale of estate property under the Bankruptcy Code is conducted by a trustee, who has ample discretion to conduct public or private sales of estate property”); *Penn Mut. Life Ins. Co. v. Woodscape Ltd. P’ship (In re Woodscape Ltd. P’ship)*, 134 B.R. 165, 174 (Bankr. D. Md. 1991) (noting that, with respect to sales of estate property pursuant to Section 363 of the Bankruptcy Code, “[t]here is no prohibition against a private sale . . . and there is no requirement that the sale be by public auction”).

14. Courts often allow a chapter 11 debtor to sell assets outside the ordinary course of business by private sale when the debtor demonstrates that the sale is permissible pursuant to section 363(b) of the Bankruptcy Code. *See, e.g., In re Astroturf, LLC*, Case No. 16-41504 (Bankr. N.D. Ga. Aug. 12, 2016) (Bonapfel, J.); *In re Catalyst Natural Gas, LLC*, Case No. 08-79390, (Bankr. N.D. Ga. Dec. 19, 2008) (Bihary, J.).

15. Here, the Debtor has no equity in the Equipment and was planning to sell the Equipment in connection with its Plan of Liquidation (Doc 169). Moreover, the Equipment is of the type that decreases in value with use over time. Through the proposed sale, the Debtor seeks to avoid incurring continued insurance and maintenance expenses in connection with the Equipment.

16. The proposed sale provides a greater recovery for the estate than could realistically be achieved by any other practically available alternative. Due to the current stage of the bankruptcy case, the Debtor believes a public sale process that includes an auction feature has little or no chance of yielding a better outcome than that afforded by the current sale proposed. Indeed, an increase in the purchase price is likely to only increase the amount of SMFL's secured claim. As a result, a public sale process would merely cause the Debtor's estate to incur additional administrative expenses without significant corresponding or offsetting benefit to the estate.

17. The Debtor's decision to sell the Equipment to the Purchaser in a private sale transaction is a valid and sound exercise of the Debtor's business judgment. The Debtor has considered all options under the circumstances and has determined that a private sale to the Purchaser will result in the greatest recovery. For all of the foregoing reasons, the relief requested in this Motion is a product of sound business judgment and is in the best interests of

the Debtor, its creditors, and estate and should be granted.

**C. Section 363(f) Authorizes the Sale Free and Clear of Liens and Other Claims.**

27. Section 363(f)(2) of the Bankruptcy Code provides that a sale may be free and clear of any interest in such property of an entity other than the estate if such entity consents.

28. One or more of the conditions set forth in §363(f) will be satisfied with respect to the sale of the Equipment. Specifically, the Debtor's secured lender, SMFL, which holds a duly perfected security interest in the Equipment will consent, or will be adequately protected by attachment to the sale proceeds. Applicable non-bankruptcy law permits sale of the Equipment free and clear of any interests therein that are subordinate to SMFL's security interest.

**D. Waiver of 14-Day Stay on Closing is Warranted.**

29. Bankruptcy Rules 6004(h) and 6006(d) respectively provide that an order authorizing the use, sale, or lease of property and an order authorizing the assumption and assignment of executory contracts or unexpired leases will be stayed for fourteen days after entry of such approval orders unless the court orders otherwise. Because of the need to close the transactions contemplated herein as promptly as possible, the Debtor requests that the Court order and direct that the order approving this Motion shall not be automatically stayed for fourteen days.

**WHEREFORE**, the Debtor respectfully requests this Bankruptcy Court to enter an order: authorizing the Debtor to sell the Equipment other than in the ordinary course, free and clear of liens, interests and other claims to Purchaser and granting such other and further relief as this Court deems just and appropriate under the circumstances.

Dated: August 23, 2018

/s/ Erno Lindner

Erno Lindner (MS Bar No. 104073)  
Baker, Donelson, Bearman, Caldwell  
& Berkowitz, P.C.  
633 Chestnut Street, Suite 1900  
Chattanooga, Tennessee 37450  
Phone No. (423) 209-42060  
Fax No. (423) 752-9633  
E-Mail: elindner@bakerdonselson.com

Attorney for Sumitomo Mitsui Finance  
and Leasing Company, Limited

/s/ Toni Campbell Parker (with permission)

Toni Campbell Parker (MS Bar No. 4018)  
Law Office of Toni Campbell Parker  
615 Oakleaf Office Lane  
Suite 201  
Memphis, Tennessee 38117  
Phone No. (901) 683-0099  
Fax No. (866) 489-7938  
E-Mail: Tparker001@bellsouth.net

Attorney for Jason Fly Logging, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that on the 23rd day of August, 2018, a copy of the foregoing electronically filed pleading was served on the parties listed below, the office of the U.S. Trustee, and the parties listed on the attached creditor mailing matrix by first-class mail, postage prepaid, unless said party is a registered CM/ECF participant who has consented to electronic notice, and the Notice of Electronic Filing indicates that Notice was electronically mailed to said party.

Toni Campbell Parker  
P.O. Box 240666  
615 Oakleaf Office Lane  
Memphis, TN 38124-0666

Sammye S. Tharp  
U. S. Trustee  
501 East Court Street, Suite 6-430  
Jackson, MS 39201

Amur Equipment Finance, Inc  
308 N Locust St  
Attn: Legal Dept  
Grand Island, NE 68801

Thomas M. Hewitt  
Butler Snow LLP  
Post Office Box 6010  
Ridgeland, MS 39158

Henry J. Applewhite  
P. O. Box 724  
Aberdeen, MS 39730

Olivia Spencer  
King & Spencer PLLC  
P.O. Box 123  
Jackson, MS 39205-0123

IRS  
Attn: Special Processing Staff  
100 West Capitol St. Room 504  
Jackson, MS 39269

Les Alvis  
207 Court Street  
P.O. Box 1836  
Tupelo, MS 38802-1836

Bruce M. Kahn  
Amy Elizabeth Strickland  
Apperson Crump PLC  
6070 Poplar Avenue  
Suite 600  
Memphis, TN 38119

MS Tax Commission  
P.O. Box 22808  
Jackson, MS 39225

D. Andrew Phillips  
P.O. Box 947  
Oxford, MS 38655

Rosamond H. Posey  
P.O. Box 947  
Oxford, MS 38655-0947

Jason Fly Logging, LLC  
1155 Jeff Sanders Rd.  
Batesville, MS 38606-9214

Joseph C. Gibbs  
111 Court Street  
P.O. Box 1117  
Clarksdale, MS 38614

Robert Alan Byrd  
145 Main Street  
P. O. Box 1939  
Biloxi, MS 39533

Joseph Black  
306 Railroad Street  
Water Valley, MS 38965

Andrew R. Wilson  
Bennett Lotterhos Sulser & Wilson, P.A.  
P.O. Box 98  
Jackson, MS 39205-0098

Stacey Moore Buchanan  
Simpson Law Firm, P.A.  
Post Office 1410  
Ridgeland, MS 39158-1410

Jacob C Zweig  
Evans Petree PC  
1715 Aaron Brenner Drive  
Suite 800  
Memphis, TN 38120

David Winston Houston, IV  
Burr & Forman LLP  
222 Second Ave South  
Suite 2000  
Nashville, TN 37201

John M. Lassiter  
401 East Capitol Street.  
Suite 100  
Jackson, MS 39201

D. Sterling Kidd  
Baker Donelson Bearman Caldwell &  
Berkowitz, PC  
Post Office Box 14167  
Jackson, MS 39236

Randall J. Fishman  
Ballin, Ballin & Fishman, P.C.  
200 Jefferson Avenue  
Suite 1250  
Memphis, TN 38103

John Seymour  
P.O. Box 349  
Fremont, NE 68026

Taylor and Martin Inc  
P.O. Box 349  
Fremont, NE 68026

/s/ Erno Lindner

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Northern District of Mississippi

Aberdeen

Wed Aug 22 13:30:14 CDT 2018

Ally Capital  
PO Box 130424  
Roseville, MN 55113-0004Ally Financial  
Post Office Box 103424  
Roseville, MN 55113Ally Financial, Inc  
c/o Joseph C. Gibbs  
111 Court Street  
P.O. Box 1117  
Clarksdale, MS 38614-1117Les Alvis  
207 Court Street  
P.O. Box 1836  
Tupelo, MS 38802-1836Amur Equipment Finance, Inc  
308 N Locust St  
Attn: Legal Dept  
Grand Island, NE 68801-5969Henry J. Applewhite  
P. O. Box 724  
Aberdeen, MS 39730-0724Aramark Uniform & Career Apparel, LLC  
c/o Sheila R. Schwager  
Hawley Troxell Ennis & Hawley, LLP  
877 Main Street, Suite 1000  
Boise, ID 83702-5884Aramark  
5508 Jefferson Parkway  
White Hall, AR 71602-3438Arkansas Best Logging LLC  
625 Garfield St  
Clarendon, AR 72029-2630Arkansas Best Logging, LLC  
Attn: John J. Taylor  
625 Garfield Street  
Clarendon, AR 72029-2630Arkansas Best Logging, LLC  
c/o Thomas M. Hewitt  
Butler Snow LLP  
1020 Highland Colony Parkway, Suite 1400  
Ridgeland, MS 39157-2139Auto Parts Co of Magnolia Inc.  
111 N Dudney  
Magnolia, AR 71753-3108Axis Capital Inc.  
308 N. Locust Street  
Grand Island, NE 68801-5985BMO Harris  
P.O. Box 71951  
Chicago, IL 60694-1951BMO Harris Bank N.A.  
PO Box 3040  
Cedar Rapids, IA 52406-3040Balboa Capital  
575 Anton Blvd., 12th Floor  
Costa Mesa, CA 92626-7169Balboa Capital Corporation  
Byrd & Wiser  
145 Main Street  
Biloxi, MS 39530-4333Banc of America Leasing & Capital  
Burr & Forman, LLP  
190 E. Capitol St., Ste. M-100  
Jackson, MS 39201-2149Banc of America Leasing & Capital  
John M. Lassiter, BURR& FORMAN LLP  
The Pinnacle at Jackson Place  
190 East Capitol Street, Suite M-100  
Jackson, Mississippi 39201-2149Barnes Tire and AC, LLC  
814 N Sebastian  
West Helena, AR 72390-1821Bellsouth Telecommunications , LLC  
101 Pine 6W-P-02  
Saint Louis, MO 63108-2111Beth Fly  
1155 Jeff Sanders Rd.  
Batesville, MS 38606-9214Joseph Black  
306 Railroad Street  
Water Valley, MS 38965-3032Bobby Henord Tire, INC  
Po Box 608  
Brinkley, AR 72021-0608Bridgefield Casualty Insurance Company  
PO Box 988  
Lakeland, FL 33802-0988Bruce M. Kahn  
Apperson Crump PLC  
6070 Poplar Avenue, Suite 600  
Memphis, TN 38119-3903Stacey Moore Buchanan  
Simpson Law Firm, P.A.  
Post Office 1410  
Ridgeland, MS 39158-1410

Robert Alan Byrd  
145 Main Street  
P. O. Box 1939  
Biloxi, MS 39533-1939

CATERPILLAR FINANCIAL SERVICES  
P.O. Box 730669  
Dallas, TX 75373-0669

CATERPILLAR FINANCIAL  
2120 W End Ave  
Nashville, TN 37203-5341

Caterpillar Financial Service Corporation  
D.Sterling Kidd,Baker,Donelson,Bearman,  
Caldwell & Berkowitz, PC  
P. O. Box 14167  
Jackson, Mississippi 39236-4167

Caterpillar Financial Services  
2120 West End Ave.  
Nashville, TN 37203-5341

Construction Saftey, Products  
6519 Murry St.  
Little Rock, AR 72209-3125

Cook Oil Company, INC  
PO Box 638  
Holly Springs, MS 38635-0638

Crain Company  
Henry B. Talbot, Farris Bobango Branan P  
999 S. Shady Grove Road, Suite 500  
Memphis, TN 38120-4128

De Lage Landen Financial Services, Inc  
%Andrew R Wilson  
P.O. Box 98  
Jackson MS 39205-0098

De Lage Landen Financial Services, Inc.  
c/o Bennett Lotterhos Sulser & Wilson PA  
Attn: Marcus Wilson and Andrew Wilson  
P.O. Box 98  
Jackson, MS 39205-0098

DeLage Landen  
1111 Old Eagle School Rd  
Wayne PA 19087-1453

DeLage Landen Financial  
P.O. Box 41602  
Philadelphia, PA 19101-1602

Deborah S. Ashen  
217 N. Jefferson Street  
Suite 601  
Chicago, IL 60661-1114

Delta Tire  
1560 Highway 61 N.  
Tunica, MS 38676-9667

Donalds Garage & Wrecker Service  
1304 Madison  
Clarendon, AR 72029-2917

ENG'S Commercial Finance Co.  
One Pierce Place  
Suite 1100 West  
Itasca, IL 60143-3149

ENG'S Commercial Finance. Co.  
c/o Henry J. Applewhite  
PO Box 724  
Aberdeen, MS 39730-0724

ENG'S Commerical  
1 Pierce Place  
Suite 1100 West  
Itasca, IL 60143-3149

Erno Lindner  
Baker, Donelson, Bearman,  
Caldwell & Berkowitz, P.C.  
633 Chestnut Street, Suite 1900  
Chattanooga, Tennessee 37450-1801

First Midwest Equipment Finance  
P.O. Box 857  
Bedford Park, IL 60499-0857

First Midwest Equipment Finance Co.  
Bennett Lotterhos Sulser & Wilson, P.A.  
Post Office Box 98  
Jackson, MS 39205-0098

First Midwest Equipment Finance Co.  
Deborah S. Ashen  
217 N. Jefferson Street, Suite 601  
Chicago, IL 60661-1114

First Midwest Equipment Finance Co.  
c/o Deborah S. Ashen  
217 N. Jefferson St., Ste. 601  
Chicago, IL 60661-1114

First Midwest Equipment Finance Co. (Fi  
%Andrew R Wilson  
P.O. Box 98  
Jackson Mississippi 39205-0098

Randall J. Fishman  
Ballin, Ballin & Fishman, P.C.  
200 Jefferson Avenue  
Suite 1250  
Memphis, TN 38103-2357

Ford Motor Credit  
P.O. Box 790093  
Saint Louis, MO 63179-0093

Ford Motor Credit Company LLC  
c/o Olivia Spencer, Esq.  
Post Office Box 123  
Jackson, MS 39205-0123

(p)FORD MOTOR CREDIT COMPANY  
P O BOX 62180  
COLORADO SPRINGS CO 80962-2180

Ford Motor Credit Company LLC  
c/o Olivia Spencer  
PO Box 123  
Jackson, MS 39205-0123

Joseph C. Gibbs  
111 Court Street  
P.O. Box 1117  
Clarksdale, MS 38614-1117

Graham Equipments Co.  
206 Wilson Dr.  
Senatobia, MS 38668-1706

Gresham Petroleum  
Document Page 12 of 16  
PO Box 397  
Tunica, MS 38676-0397

Thomas M. Hewitt  
Butler Snow LLP  
Post Office Box 6010  
Ridgeland, MS 39158-6010

Higgins Auto and AC Supply  
20 HWY 1 Bypass  
Marianna, AR 72360-2100

Hitachi Capital America  
21925 Network Pl  
Chicago, IL 60673-1219

Hitachi Capital America  
c/o Stacey Moore Buchanan  
Simpson Law Firm, P.A.  
Post Office 1410  
Ridgeland, MS 39158-1410

Hitachi Capital America Corp  
%Matthew F Kye  
201 Old Country Road Suite 120  
Melville NY 11747-2725

Hitachi Capital America Corp.  
c/o Matthew F. Kye, Esq.  
Kye Law Group, P.C.  
201 Old Country Road  
Suite 120  
Melville, NY 11747-2725

Hitachi Capital America Corp.  
c/o Matthew F. Kye, Esq.  
Kye Law Group, P.C.  
120 Old Country Road, Suite 120  
Melville, NY 11747-2009

Home Oil Company, Inc.  
PO Box 83  
Dundee, MS 38626-0083

David Winston Houston IV  
Burr & Forman LLP  
222 Second Ave South  
Suite 2000  
Nashville, TN 37201-2385

(p) INTERNAL REVENUE SERVICE  
CENTRALIZED INSOLVENCY OPERATIONS  
PO BOX 7346  
PHILADELPHIA PA 19101-7346

Internal Revenue Service  
In care of U.S. Attorney  
900 Jefferson Avenue  
Oxford MS 38655-3608

Internal Revenue Service  
P. O. Box 7346  
Philadelphia PA 19101-7346

Jason Fly  
1155 Jeff Sanders Rd  
Batesville, MS 38606-9214

Jason Fly Logging, LLC  
1155 Jeff Sanders Rd.  
Batesville, MS 38606-9214

John Deere Construction & Forestry Company  
c/o Les Alvis  
P.O. Box 1836  
207 Court St.  
Tupelo, MS 38804-3907

John Deere Financial  
P.O. Box 650215  
Dallas, TX 75265-0215

John Deere Financial, f.s.b.  
c/o Les Alvis  
P.O. Box 1836  
Tupelo, MS 38802-1836

D. Sterling Kidd  
Baker Donelson Bearman Caldwell & Berkow  
Post Office Box 14167  
Jackson, MS 39236-4167

Kimball Midwest  
Department L-2780  
Columbus, OH 43260-2780

John M. Lassiter  
401 East Capitol Street.  
Suite 100  
Jackson, MS 39201-2608

Erno D. Lindner  
Baker, Donelson, Bearman, Caldwell & Ber  
1800 Republic Centre  
633 Chestnut Street  
Chattanooga, TN 37450-4000

MACK Financial Services  
c/o Erno Linder  
Baker, Donelson  
1800 Republic Centre, 633 Chestnut St  
Chattanooga, TN 337540-4000

MHC Financial Services  
11120 Tomahawk Creek Pkwy.. Ste. 100-A  
Welda, KS 66091

MHC Financial Services, Inc.  
Apperson Crump PLC  
Bruce M. Kahn  
6070 Poplar Avenue  
Suite 600  
Memphis, TN 38119-3903

MHC Financial Services, Inc.  
c/o Bruce M. Kahn  
6070 Poplar Avenue  
Suite 600  
Memphis, TN 38119-3901

MS Tax Commission  
P.O. Box 22808  
Jackson, MS 39225-2808

Mack FInancial Services  
PO Box 26131  
Greensboro, NC 27402-6131

Mack Financial Services a division of VFS US  
c/o Erno Lindner  
633 Chestnut St.  
Suite 1900  
Chattanooga, TN 37450-1801

Mechanics Bank  
c/o D. Andrew Phillips, Esquire  
Mitchell, McNutt & Sams, P.A.  
Post Office Box 94 7  
Oxford, MS 38655-0947

Mechanics Bank  
c/o Rosamond H. Posey, Esquire  
Mitchell, McNutt & Sams, P.A.  
Post Office Box 94 7  
Oxford, MS 38655-0947

Mid South Sales, Inc.  
243 CR 414  
Jonesboro, AR 72404-7508

Mississippi Department of Revenue  
Bankruptcy Section  
Post Office Box 22808  
Jackson MS 39225-2808

Mitcham Truck and Auto Supply  
PO Box 490  
9580 Strong Highway  
Strong, AR 71765-0490

Morgan Law Firm  
148 Court Street  
Clinton, AR 72031-7085

Napa Auto Parts  
101 E. Hospital Rd.  
Sardis, MS 38666-1271

Napa Auto Parts  
603 W. Main Street  
Charleston, MS 38921-2130

On the Spot Windshield Repair  
1085 Highway 49 West  
West Helena, AR 72390-1835

On the Spot Windshield Repair LLC  
%Paige Ginn  
P.O. Box 158  
Lexa AR 72355-0158

PACCAR Financial Corp.  
c/o Olivia Spencer, Esq.  
Post Office Box 123  
Jackson, MS 39205-0123

(p)PACCAR FINANCIAL CORP  
P O BOX 1518  
BELLEVUE WA 98009-1518

Paccar Financial  
PFC South east office 2180 satellite BLV  
Suite 200  
Duluth, GA 30097

Toni Campbell Parker  
P.O. Box 240666  
Memphis, TN 38124-0666

Toni Campbell Parker  
P.O. Box 240666  
615 Oakleaf Office Lane  
Memphis, TN 38117-4812

D. Andrew Phillips  
P.O. Box 947  
Oxford, MS 38655-0947

Pierce and Company, INC  
209 North Buerkle  
PO Box 140  
Stuttgart, AR 72160-0140

Rosamond H. Posey  
P.O. Box 947  
Oxford, MS 38655-0947

Pro Billing & Funding Service  
PO Box 2222  
Decatur, AL 35609-2222

Ralph W Waddell  
P.O. Box 1700, 310 East Street  
310 East Street  
Jonesboroo, AR 72401

Ralph Waddell  
Waddell Cole & Jones PLLC  
P O Box 1700  
Jonesboro, AR 72403-1700

Regions Bank  
P.O. Box 10063  
Birmingham, AL 35202-0063

Santander Bank  
P.O. Box 14833  
Reading, PA 19612-4833

Santander Bank N. A.  
c/o Cliff A. Katz, Esq.  
Platzer, Swergold, Levin, Goldberg,  
Katz & Jaslow, LLP  
475 Park Avenue, South  
New York, NY 10016-6901

Sewell Oil Company  
3400 Junction City HWY.  
El Dorado, AR 71730-8308

John Seymour  
P.O. Box 349  
Fremont, NE 68026-0349

Sibley Auto & Farm Supply, INC  
81 Plaza Ave  
West Helena, AR 72390-2367

Southern States Utility Trailer Sales, Inc.  
PO Box 6257  
Pearl, MS 39288-6257

Southern Timber Resources, Inc.  
Document Page 14 of 16  
P.O. Box 190  
Bryant, AR 72089-0190

Southern Tire Mart, LLC  
Dept 143 PO Box 1000  
Memphis, TN 38148-0143

Sparks Auto Part  
1360 N Lamar  
Oxford, MS 38655-2838

Olivia Spencer  
King & Spencer PLLC  
P.O. Box 123  
Jackson, MS 39205-0123

Stephenson Oil Company, Inc.  
Morgan Law Firm, P.A.  
148 Court Street  
Clinton, AR 72031-7085

Stribling Equipment, LLC  
P.O.Box 6038  
Pearl, MS 39288-6038

Amy Elizabeth Strickland  
Apperson Crump, PLC  
6070 Poplar Avenue, Suite 600  
Memphis, TN 38119-3903

Sumitomo Mitsui Finance  
277 Park Ave., 15th Floor  
New York, NY 10172-0003

Sumitomo Mitsui Finance & Leasing  
277 Park Ave., 15th Floor  
New York, NY 10172-0003

Sumitomo Mitsui Finance and Leasing Company,  
Attention: Accounting - Contract # 1131  
666 Third Avenue, 8th Floor  
New York, New York 10017-4033

Sumitomo Mitsui Finance and Leasing Company,  
c/o Erno Lindner  
633 Chestnut St.  
Suite 1900  
Chattanooga, TN 37450-1801

TBK Bank SSB  
Triumph Bank Financial  
12700 Park Central Drive, Ste. 1700  
Dallas, TX 75251-1517

TD Auto Finance  
P.O. Box 16035  
Middlefield, MA 01243

TD Auto Finance  
P.O. box 9223  
Farmington, MI 48333-9223

TD Auto Finance LLC  
Jacob Zweig, Esq.  
EVANS PETREE PC  
1715 Aaron Brenner Drive, Suite 800  
Memphis, TN 38120-1445

TD Auto Finance, LLC  
1715 Aaron Brenner Drive, Suite 800  
Memphis, TN 38120-1445

TD Auto Finance, LLC  
P.O. Box 16041  
Lewiston, ME 04243-9523

Taylor and Martin Inc  
P.O. Box 349  
Fremont, NE 68026-0349

Teletrac Navman US Ltd.  
7391 Lincoln Way  
Garden Grove, CA 92841-1428

Sammye S. Tharp  
501 East Court Street  
Suite 6-430  
Jackson, MS 39201-5022

Thompson Machine  
1245 Bridgestone BLVD  
La Vergne, TN 37086-3510

Truck Pro LLC  
29787 Network Place  
Chicago, IL 60673-1297

Truck Pros  
190 Charles Bryan  
Cordova, TN 38016

U. S. Trustee  
501 East Court Street, Suite 6-430  
Jackson, MS 39201-5022

U.S. Securities and Exchange Commission  
Atlanta Regional Office  
950 East Paces Ferry Road, N.E., Suite 9  
Atlanta GA 30326-1180

Volvo Financial Services, a division of VFS  
c/o Erno D. Lindner, Esq.  
633 Chestnut St., Ste. 1900  
Chattanooga, TN 37450-1801

Andrew R. Wilson  
Bennett Lotterhos Sulser & Wilson, P.A.  
P.O. Box 98  
Jackson, MS 39205-0098

Jacob C Zweig  
Evans Petree PC  
1715 Aaron Brenner Drive  
Suite 800  
Memphis, TN 38120-1445

The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

Ford Motor Credit Company LLC  
P.O. Box 62180  
Colorado Springs, CO 80962

IRS  
Attn: Special Processing Staff  
100 West Capitol St. Room 504  
Jackson, MS 39269

(d) Internal Revenue Service  
Attn: Special Processing Staff  
100 West Capitol Street  
Room 504  
Jackson MS 39269

PACCAR Financial Corp.  
Attn: Linda Markle, BK Specialist  
P.O. Box 1518  
Bellevue, WA 98009-1518

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

(d) Aramark  
5508 Jefferson Parkway  
White Hall, AR 71602-3438

(d) Arkansas Best Logging LLC  
625 Garfield St  
Clarendon, AR 72029-2630

(u) Arkansas Best Logging, LLC

(u) BMO Harris

(d) Balboa Capital  
575 Anton Blvd., 12th Floor  
Costa Mesa, CA 92626-7169

(d) Balboa Capital Corporation  
575 Anton Boulevard  
12th Floor  
Costa Mesa, CA 92626-7169

(u) Banc of America Leasing & Capital, LLC

(d) Bobby Henord Tire, INC  
Po Box 608  
Brinkley, AR 72021-0608

(d) Caterpillar Financial  
2120 W End Ave  
Nashville, TN 37203-5341

(d) Cook Oil Company, INC  
PO Box 638  
Holly Springs, MS 38635-0638

(u) Dragon Woodland Corporation

(d) ENGS Commercial Finance Co.  
One Pierce Place Suite 1100 West  
Itasca, IL 60143-3149

(d) Ford Motor Credit  
P.O. Box 790093  
Saint Louis, MO 63179-0093

(d) Graham Equipments Co.  
206 Wilson Dr.  
Senatobia, MS 38668-1706

(d) Gresham Petroleum  
PO Box 397  
Tunica, MS 38676-0397

(d) Jason Fly  
1155 Jeff Sanders Rd.  
Batesville, MS 38606-9214

(d) John Deere Construction & Forestry Company  
c/o Les Alvis  
P.O. Box 1836  
207 Court St.  
Tupelo, MS 38804-3907

(d) John Deere Financial  
P.O. Box 650215  
Dallas, TX 75265-0215

(u)Bruce M. Kahn  
 Apperson Crump PLC  
 6070 Poplar Avenue  
 Suite 600  
 Memphis38119

(d)MHC Financial Services  
 11120 Tomahawk Creek Pkwy., Ste. 100-A  
 Welda, KS 66091

(d)Mechanics Bank  
 P.O. Box 707  
 Water Valley, MS 38965-0707

(d)Mechanics Bank  
 P.O. Box 707  
 Water Valley, MS 38965-0707

(d)Morgan Law Firm  
 148 Court Street  
 Clinton, AR 72031-7085

(d)PACCAR Financial Corp.  
 c/o Olivia Spencer, Esq.  
 Post Office Box 123  
 Jackson, MS 39205-0123

(d)Paccar Financial  
 PFC South east office 2180 satellite BLv  
 Suite 200  
 Duluth, GA 30097

(d)Pro Billing & Funding Service  
 PO Box 2222  
 Decatur, AL 35609-2222

(d)Southern Tire Mart, LLC  
 Dept 143 PO Box 1000  
 Memphis, TN 38148-0143

(d)Stribling Equipment, LLC  
 P.O.Box 6038  
 Pearl, MS 39288-6038

(d)Thompson Machine  
 1245 Bridgestone BLVD  
 La Vergne, TN 37086-3510

End of Label Matrix	
Mailable recipients	148
Bypassed recipients	29
Total	177